Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122
	)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION
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EXECUTIVE SUMMARY

Following over two years of deliberation, the Federal Communications Commission (the "Commission") in February adopted a comprehensive framework for the accelerated relocation of satellite operations in the lower 300 MHz of the C-band. The Commission specified that this spectrum relocation would proceed under the existing *Emerging Technologies* precedent.

The rulemaking record was clear that satellite procurement and launch costs would be the largest single component of necessary relocation expenses. However, Eutelsat S.A. now urges the Commission, in the guise of unnecessary "clarification," to adopt severe restrictions on replacement satellites and their reimbursable costs. Requiring satellite operators to procure satellites with "a C-band-only payload operating in the 4.0-4.2 GHz band providing coverage solely to the [contiguous United States] for the entire duration of its useful life" would deviate from industry practice, introduce significant new cost burdens and inefficiencies, create inevitable delays, and run afoul of the Commission's decades-long *Emerging Technologies* precedent on comparable facilities. Any concern about appropriate cost allocation has already been addressed by the Commission, as it will have oversight of the independent Relocation Payment Clearinghouse to prevent reimbursement of unnecessary costs. Further, Intelsat has stated on the record that it would not seek reimbursement for costs associated with additional payloads on necessary replacement satellites.

In an attempt to interject itself into the funding and oversight of the transition process, the International Telecommunications Satellite Organization ("ITSO") filed a Petition that fabricates a role for itself. Its Petition is procedurally flawed, and the recent history of ITSO demonstrates that it has no role in -- and is not entitled to payments from -- the accelerated C-band relocation.

For these reasons, these Petitions for Reconsideration must be denied.

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

Intelsat License LLC ("Intelsat")[1] files this Opposition to two of the Petitions for Reconsideration or Clarification (the "Petitions" or, individually, "Petition") filed by Eutelsat S.A. ("Eutelsat") and the International Telecommunications Satellite Organization ("ITSO") in this docket. Each of these Petitions raises issues about the fundamentals of the transition process to clear the C-band, a process that Intelsat has been working on for well over two years and that is already underway.[2] Neither Eutelsat nor ITSO presents a sufficient basis or reason for the Federal Communications Commission (the "FCC" or the "Commission") to reconsider aspects of the C-band transition framework adopted by the Report and Order.[3]

It is well-established that the Commission should grant petitions for reconsideration only "when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters."[4] The Commission should dismiss a petition for

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[1] Intelsat License LLC, an FCC satellite licensee, and its affiliated entity Intelsat US LLC, which provides operational services to Intelsat License LLC, are collectively referred to in this Opposition as "Intelsat."

[2] *See generally* Eutelsat Petition for Expedited Reconsideration or Clarification (May 26, 2020), https://ecfsapi.fcc.gov/file/10523184488608/Pet%20for%20Recon%20or%20Clarification%20(2020-05-23).pdf; ITSO Petition for Clarification and/or Reconsideration (May 27, 2020), https://ecfsapi.fcc.gov/file/10526747701000/ITSO%20Petition%20for%20Clarification%20or%20%20Reconsideration%20Dkt%2018-122%20May%2026%202020.pdf.

[3] *See* Expanding Flexible Use of the 3.7 to 4.2 GHz Band, *Report and Order & Order of Proposed Modification*, 35 FCC Rcd. 2343 (2020) ["Report and Order"].

[4] *See, e.g.*, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, *Order on Reconsideration*, WC Docket No. 18-155, FCC-20-79, para. 15,

reconsideration when "parties . . . use the reconsideration process to rehash and re-litigate legal issues already raised (or that should have been raised) earlier in the same proceeding."[5] The Commission's rules echo this standard, and neither Eutelsat nor ITSO has presented any compelling reason why the Commission should modify its transition framework.[6]

I. Eutelsat's Requests for Relief Should Be Rejected.

Eutelsat's Petition contains a litany of concerns - from its perspective - about potential cost allocations and cost review process problems within the transition framework. Eutelsat advocates that the Commission adopt a range of draconian restrictions on payload design and reimbursement qualification for new satellites. Specifically, for the first time in this years-long proceeding, Eutelsat began advocating that the Commission "clarify that, to be considered an eligible relocation cost, a replacement satellite must offer only C-band services" in its Cost Catalog comments, two months after the adoption of the Report and Order.[7] In support of this

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https://docs.fcc.gov/public/attachments/FCC-20-79A1.pdf (June 11, 2020); Mitigation of Orbital Debris In the New Space Age, *Notice of Proposed Rulemaking and Order on Reconsideration*, 33 FCC Rcd. 11352, para. 106 (2018).

[5] Federal-State Joint Board on Universal Service, *2d Order on Reconsideration and Order*, 35 FCC Rcd. 2641, para. 18 (2020). While the Commission dismissed the petition for reconsideration under its non-rulemaking procedures in this order, the policy rationales for the reconsideration rules are identical. *See* Service Rules for Advanced Wireless Service H Block—Implementing Section 6401 of the Middle Class Tax Relief & Job Creation Act of 2012 Related to the 1915-1920 MHz & 1995-2000 MHz Bands, *Order on Reconsideration*, 34 FCC Rcd. 2546, para. 12, n.42 (2019) ("[T]his argument is procedurally defective pursuant to Section 1.429(b), (l)(2)-(3) of the Commission's rules, and we dismiss it for that reason.").

[6] 47 C.F.R. § 1.429(l) (factors include "fail[ure] to identify any material error, omission, or reason warranting reconsideration," "rely[ing] on arguments that have been fully considered and rejected by the Commission within the same proceeding," "[r]elying on facts or arguments which have not previously been presented to the Commission" and "[r]elat[ing] to matters outside the scope of the order for which reconsideration is sought.").

[7] Eutelsat Petition, 3; *see* Comments of Eutelsat S.A., 1-4 (May 14, 2020), https://ecfsapi.fcc.gov/file/10514307455647/Eutelsat%20Cost%20Catalog%20Comments%20(FINAL%202020-05-14).pdf. Mere passing references to potential issues in parties' filings before the FCC is not sufficient to show that the argument has been previously presented to the FCC. *Cf. Worldcall Interconnect, Inc. v. Fed. Commc'ns Comm'n*, 907 F.3d 810, 823 (5th Cir. 2018); *Sorenson Commc'ns, Inc. v. Fed. Commc'ns Comm'n*, 567 F.3d 1215, 1227-28 (10th Cir. 2009). Because this argument has not previously been presented to the Commission and Eutelsat's Petition has not demonstrated that circumstances have changed or that the issues it raises were

"clarification," Eutelsat states its belief that the Commission's "comparable facilities" standards, as applicable to replacement satellites in the C-band transition, "must necessarily [mean] a C-band-only payload operating in the 4.0-4.2 GHz band providing coverage solely to the [contiguous United States] ("CONUS") for the entire duration of its useful life."[8] As such, Eutelsat argues, satellites with other frequency bands or non-CONUS coverage should not be allowed as replacements.[9]

Eutelsat's proposals do not represent a mere "clarification," but rather would be a wholly new restriction of tremendous significance to those satellite operators that are already deep into the investment in, and manufacturing of, the replacement satellites required to achieve the aggressive timeline the Commission specified for accelerated relocation. For the following reasons, each of Eutelsat's requests for reconsideration should be rejected.

A. Eutelsat's Petition Offers No Coherent Legal or Policy Reason for the Commission to Dictate There be C-Band-Only Replacement Satellites.

The Commission should reject Eutelsat's invitation for "clarification" for a number of reasons. First, Eutelsat has identified no substantive legal reason why the FCC should limit the type and functionality of replacement satellites to be used to accomplish the C-band spectrum clearing and transition process. As discussed below, in an attempt to support the application of its own "comparable facilities" standard, Eutelsat relies on a misplaced "belief" that replacement satellites can only carry C-band payloads to be "comparable" to existing satellites.[10] This "belief" cannot function as a substitute for the FCC's "comparable facilities" standard.

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unknown to it through the exercise of ordinary diligence or that considering new arguments now would be in the public interest, this argument does not warrant reconsideration. *See* 47 C.F.R. §§ 1.429(b), (l)(2); *Order on Reconsideration*, FCC-20-79, para. 15.

[8] *See* Eutelsat Petition, 3, 4, 9. Eutelsat also asserts that the Report and Order only references the FCC's "comparable facilities" standard but does not "clearly define" how to determine what types of replacement satellites would be "comparable."

[9] *Id.* at 5, 7.

[10] *Id.* at 4-5.

Eutelsat asserts that its proposed restriction on replacement satellites would be based on the FCC's determination that "the costs of transitioning to an alternative form of delivery, such as fiber" would not be considered "compensable earth station migration costs."[11] Eutelsat ignores that this reference applies to "earth station migration costs" only. It also ignores that installing new filters on earth stations to allow for migration of services to the upper 200 MHz of the C-band spectrum or a decision to adopt an "alternative form of delivery" outside of the C-band spectrum are mutually exclusive options. In contrast, C-band payloads and non-C-band payloads can co-exist on the same satellite, with costs allocated on a reasonable basis. Because Eutelsat "fail[s] to identify any material error, omission, or reason warranting reconsideration," there is no legal basis for reconsideration or clarification; rather, the Commission should affirm its overall approach to this matter.[12]

Eutelsat's proposed circular definition of comparability is similarly unjustified. As an initial matter, Intelsat's CONUS satellites are in many cases hybrid satellites, as Intelsat pointed out in its previous filing.[13] Intelsat submits that its replacement satellites can be similarly configured. The FCC's *Emerging Technologies* framework consistently has recognized that the "comparable facilities standard requires that post-transition facilities "must be equal to or superior to existing facilities," "fully comparable to those being replaced," "equivalent in every respect," while allowing for "*de minimis* differences."[14] The Report and Order is not at all ambiguous on the question of "comparable" replacement satellites as Eutelsat suggests; the

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[11] *Id.* at 5 (citing Report and Order, para. 201, n.539).
[12] *See* 47 C.F.R. § 1.429(l)(1).
[13] *See* Intelsat Ex Parte Filing, 2 (May 26, 2020), https://ecfsapi.fcc.gov/file/10526045231531/Ex%20Parte%20Meeting%20-%20Intelsat%2026%20May%202020.PDF.
[14] *See, e.g.*, Mississippi State University, *Mem. Opinion & Order*¸ 28 FCC Rcd. 11207, para. 3, fn. 9 (2013); Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *Mem. Opinion and Order*, 9 FCC Rcd. 1943, para. 35 (1994); Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *2d Report and Order*, 8 FCC Rcd. 6495, para. 36 (1993).

Commission stated that it would continue to apply its "comparability standard" that has been developed and applied over time for this and other aspects of the transition.

The FCC's comparability analysis examines a range of objective factors to measure what an operator has in terms of facilities and their capabilities before a transition against what they have afterwards.[15] A significant factor in assessing comparability is whether the "after" state of equipment has functionally equivalent capabilities.[16] The FCC has recognized that functional equivalency can be demonstrated by "ability to access all facilities" in the same way before or after the transition or "equivalent channel capacity" that is currently available.[17] Clearly, this would mean the ability to replace hybrid satellites with hybrid satellites.

Additionally, the Commission recognized, as early as 1993, that any "inflexible definition of comparable facilities" as a general matter "would impair the process [because] comparable facilities will be unique for each individual system [with] many variables involved with system design and operation."[18] Satellite operators must be permitted to specify the satellites they need to complete the transition and provide comparable or better service to existing customers. And so long as the cost reimbursement for these new satellites are reasonably limited to the C-band component costs, the FCC need not impose unnecessary and inefficient restrictions on those satellites.[19]

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[15] *See* Report and Order, para. 326, n. 72; 47 C.F.R. §§ 27.1251(c), 27.1252(b), 90.699(d), 101.73(d), 101.75(b); *Mem. Opinion & Order*¸ 28 FCC Rcd. 11207, paras. 4-6, 43; County of Genesee, New York, *Mem. Opinion & Order*, 26 FCC Rcd. 12772, para. 35 (2011); *2d Report and Order*, 8 FCC Rcd. 6495, para. 36.

[16] *See* Report and Order, para. 194; *see also* 47 C.F.R. § 90.699(d); *Mem. Opinion & Order*¸ 28 FCC Rcd. 11207, paras. 4-6, 43; *Mem. Opinion & Order*, 26 FCC Rcd. 12772, para. 35; *2d Report and Order*, 8 FCC Rcd. 6495, para. 36.

[17] *See* 47 C.F.R. § 90.699(d).

[18] *2d Report and Order*, 8 FCC Rcd. 6495, paras. 35-36; *see also* Report and Order, para. 194.

[19] To the extent that any satellites necessary to achieve acceleration have additional non-C-band frequencies, Intelsat would only seek reimbursement for the C-band payload costs.

Second, Eutelsat's Petition fails on policy grounds as well, as it represents a thinly veiled attempt to deny Intelsat the ability to manage its satellite fleet in a commercially reasonable manner. The proposed draconian restriction to limit new satellites to C-band payloads simply does not reflect how satellites are designed, procured, and operated.[20] Requiring satellite operators to procure and launch two different satellites with different payloads at a single location for operations in different frequency bands to replace a single hybrid satellite would be highly inefficient, more costly and have the potential to delay the overall clearing schedule.[21] It would also create unnecessary risk by nearly doubling the number of satellites in the North American arc. These serious consequences can be easily avoided simply by applying appropriate cost allocations if a satellite payload includes more than C-band frequencies, as suggested by the Report and Order.[22]

Finally, Eutelsat fails to articulate why limiting any replacement satellite to C-band functionality would assist in making the very compressed timeframe for transition operate more smoothly. In fact, such a restriction would have the opposite effect. Intelsat has already entered into contractual commitments for the manufacture of several hybrid replacement satellites that are necessary to effectuate an accelerated transition, so abrupt adoption of such a misguided policy at this stage of the relocation framework would be punitive, untimely and unworkable.[23]

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[20] It takes approximately three years to plan, design, manufacture, launch, test, and place a satellite into commercial operation. Doubling any part of this work would be time-consuming, costly and inefficient. As but one example, flying two satellites instead of one needlessly consumes additional operator resources.

[21] Other parties agree that Eutelsat's approach is flawed. *See* The Boeing Company Comments on Preliminary Cost Category Schedule (May 28, 2020), 2-3 https://ecfsapi.fcc.gov/file/10528267578474/Boeing%20ex%20parte%20letter%20on%20satellite%20costs%205%2028%202020.pdf (noting that it would be highly inefficient to replace hybrid satellites with C-band-only satellites).

[22] *See* Report and Order, para. 194.

[23] *See* Intelsat License LLC C-Band Clearing Transition Plan, 9-11 (June 19, 2020), https://ecfsapi.fcc.gov/file/106190607411191/Transition%20Plan%20-%20Intelsat%206-19-2020.pdf; Intelsat, *Intelsat Files C-band Spectrum Transition Plan with FCC to Accelerate America's 5G Buildout* (June 19, 2020), http://www.intelsat.com/news/press-release/intelsat-

In any event, the FCC has a ready answer in the form of allocating costs for hybrid satellites so that Intelsat is reimbursed only for C-band satellite capacity that is necessary for the transition. Indeed, the Commission already has considered the scenario where replacement equipment does not solely contain functionality necessary to the C-band transition.[24] Nowhere in the Report and Order did the FCC limit new or replacement satellites to exclusively provide C-band services. As Boeing correctly pointed out, because the costs incurred for necessary replacement satellites with payloads of other spectrum bands beyond the C-band have been broken down by the manufacturer as a standard industry practice, any cost concern has been fully addressed.[25] There is simply no reason why the FCC should strive to contort its "comparable facilities" standard in the manner Eutelsat seeks and impose an unworkable restriction that will make an accelerated transition difficult to accomplish.

B. Eutelsat's Request to "Clarify" that Replacement Satellites May Only Provide Coverage to CONUS Deviates from the "Comparable Facilities" Standard.

In seeking to further limit the functionality of other satellite operators' replacement satellites, Eutelsat asserts that "only costs of CONUS satellite coverage are eligible, not the cost of a replacement satellite providing coverage to other areas of the world."[26] It also asks that the Commission "clarify how new C-band satellite functionalities which result in additional (non-minimal) capacity, throughput, or coverage (e.g., non-CONUS portion of the United States such

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files-c-band-spectrum-transition-plan-with-fcc-to-accelerate-americas-5g-buildout/. The accelerated clearing schedule requires satellite operators to have already made judgments about the necessary Transition Plan activities that must occur prior to the FCC initiating its expected overlay license auction. Eutelsat fails entirely to account for this reality – likely because of the very limited scope of its own clearing activities.

[24] *See* Report and Order, para. 194 ("[I]f an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation.").

[25] *See* Boeing Company Comments on Preliminary Cost Category Schedule (May 28, 2020), 2-3.

[26] Eutelsat Petition, 5-6.

as Alaska, Hawaii, the Gulf of Mexico, and U.S. territories) will be addressed."[27] However, under the FCC's long-standing "comparable facilities" standard, CONUS-only satellites would not be functionally equivalent to the satellites Intelsat uses today to serve CONUS.

Those functionalities in the satellites Intelsat is using today to serve its CONUS customers are the functionalities that any Intelsat replacement satellites must have to be considered comparable.[28] Eutelsat proposes an unrecognizable, wholly new comparability standard that bears no resemblance to that used by the FCC.[29] There is no question that Intelsat's North American fleet both serves CONUS and "sees" beyond CONUS to other parts of the United States and the Caribbean. Intelsat had always proposed only to utilize replacement satellites in the North American arc, which – while primarily utilized for CONUS -- can and do also provide service to Canada, the Caribbean and Mexico. To the extent Intelsat's satellites "see" beyond CONUS today, its replacement satellites should be able to as well, otherwise Intelsat would be penalized with a material loss of "equivalent capabilities."[30]

Moreover, Eutelsat's desired clarification would not advance the transition process or be in the public interest. Its suggestion that replacement satellites should be limited to CONUS-only coverage, if adopted, would cause the loss of existing services on North American arc satellites that are downlinked in Alaska, Canada or the Caribbean. Such a result would harm satellite providers and their customers, as well as the end users of satellite services.

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[27] *Id.* at 11.

[28] As Intelsat will limit its reimbursement request for its replacement satellites to the costs of C-band payloads, there is no merit to Eutelsat's suggestion that Intelsat is getting a reimbursement windfall on replacement satellites.

[29] *See* Report and Order, para. 194; *see also* 47 C.F.R. § 90.699(d); *Mem. Opinion & Order*¸ 28 FCC Rcd. 11207, paras. 4-6, 43; *Mem. Opinion & Order*, 26 FCC Rcd. 12772, para. 35; *2d Report and Order*, 8 FCC Rcd. 6495, para. 36.

[30] Intelsat requires this non-CONUS capability in order to move customers with non-CONUS-only downlinks – e.g., customers serving Alaska -- who are currently in the top 200 MHz, into the lower 300 MHz.

C. Any Cost Concerns Raised in Support of Restrictions on Replacement Satellites Are Best Addressed by Using the "Necessary for Relocation" Analysis of the Report and Order.

Eutelsat urges the Commission to "further describe its cost allocation methodology" and "address which features or functions would indeed be eligible (and, conversely, ineligible) for reimbursement, and the precise methodology that would be used for making assessments in relation to cost reimbursement allocations for potential hybrid equipment."[31] Eutelsat suggests that assessment of the "reasonableness" of costs for reimbursement should be tied to a standard metric "such as the verifiable market price for a cost element (e.g., a launch service)."[32] This ignores that the Commission already has set standards for reimbursement and delegated reimbursement authority to an independent Relocation Payment Clearinghouse (the "Clearinghouse"). Eutelsat also argues that, if the FCC were to conclude that any portion of a satellite that can provide service outside the CONUS or use additional satellite spectrum bands would be eligible for reimbursement, then the FCC should establish the cost allocation criteria for these functionalities.[33]

Eutelsat fails to illustrate what more the FCC should do to articulate reasonable cost allocations for shared resources beyond what the agency has already. The FCC has acknowledged the shared resource issue and has dealt with it by articulating a standard that the Clearinghouse is to use. The FCC also invited comments on and will finalize a Cost Catalog that details the estimated range of "presumptively reasonable" costs that detail "a range of estimated costs for the transition[] with appropriate itemization to allow reasonable review" by

[31] Eutelsat Petition, 10.
[32] *Id.* at 7.
[33] Specifically, Eutelsat asserts that the FCC "should clarify how to allocate costs for the satellite bus, launch services, and control facilities when the satellite will be providing more than just capacity required for the transition." *Id.* at 10.

stakeholders.[34] And the FCC has empowered the Clearinghouse to review, approve, and ensure that any "incremental costs" for additional capabilities of replacement equipment should not be reimbursed under the *Emerging Technologies* framework.[35] That is more than sufficient.

Additionally, the cost reimbursement categories and ranges that the FCC is currently reviewing are based on interviews with a range of stakeholders with roles in the transition, as well as public comment.[36] Eutelsat's input will be considered there. There is no reason for the FCC on reconsideration to entertain Eutelsat's request to delegitimize whole cost categories and ranges, which would only serve to put at risk a successful transition.[37]

While Intelsat agrees that market prices can be a way to demonstrate reasonable costs incurred in satellite replacement, that approach is not the only way to demonstrate reasonable costs. As Boeing recently observed, there is not a one size fits all for satellite costs and the imperative of a speedy transition takes away any of the luxury of time an operator might otherwise have to achieve a "more normal" range of cost savings.[38] That was well understood by the majority of stakeholders involved in the rulemaking process. Indeed, the satellite operators with significant clearing responsibilities were completely transparent in their filings

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[34] *See* The Wireless Telecommunications Bureau Establishes A New Docket and Describes The Process for Comment on Space Station Operator Transition Plans, *Public Notice*, GN Docket Nos. 18-122, 20-173, DA 20-642, https://docs.fcc.gov/public/attachments/DA-20-642A1.pdf (June 18, 2020); Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation, *Public Notice*¸ GN Docket No. 18-122, DA-20-457, https://docs.fcc.gov/public/attachments/DA-20-457A1.pdf (Apr. 27, 2020); Report and Order, paras. 262, 302.

[35] *See* Report and Order, para. 194; *see also* Report and Order, paras. 260, 262, App'x A (codified at 47 C.F.R. § 27.1416).

[36] *See Public Notice*¸ DA-20-457, 2.

[37] For example, Eutelsat urges that the FCC "categorically exclude the cost of back-up launches or ground spares from satellite relocation costs, as reimbursement for such costs would amount to subsidization of satellite or launch capacity that may not be used to provide C-band services within CONUS." Eutelsat Petition, 7. This position finds no basis in light of the type of risk management that will be critically important to ensure that customers do not suffer service disruption should a launch failure occur. All new Intelsat satellites are necessary to ensure the acceleration timeframe can be met and service levels maintained.

[38] The Boeing Company Comments on Preliminary Cost Category Schedule (May 28, 2020), 2.

that achieving 300 MHz of clearing in three years was going to be more costly than a clearing target of 200 MHz or some other lesser amount – precisely because of the need to build and launch more new satellites with less individual transponder capacity in a very compressed time frame.[39] Rewriting this history now, particularly when there are processes in place and an independent entity that will operate to ensure no gold-plating of relocation costs occurs, is unwarranted.[40]

Moreover, without first establishing any predicate that the Clearinghouse will be unable to fulfill its assigned duties, Eutelsat asserts that the FCC should specify a process to allow "interested third parties . . . to review and, in appropriate cases, challenge the costs submitted by incumbent operators, even if those costs fall within the Cost Catalog's presumptively reasonable limits."[41] This request also is unwarranted.

Because the FCC will be available to be the check on unnecessary costs or profligate spending, there is no reason to create an additional public information-sharing role for the Clearinghouse. Eutelsat's requests effectively seek to have the FCC take back the role it has

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[39] *See, e.g.*, Intelsat Opposition to Small Satellite Operators' Petition for Stay of the C-Band Report and Order, 4-6 (May 27, 2020), https://ecfsapi.fcc.gov/file/1052786288640/Opposition%20to%20SSO%20Petition%20for%20Stay%20-%20Intelsat%2027%20May%202020.pdf; C-Band Alliance Ex Parte Letter, 8 (Jan. 14, 2020), https://ecfsapi.fcc.gov/file/10114901800539/CBA%20-%20Importance%20of%20Speed%20and%20the%20Speed%20Provided%20by%20the%20CBA.pdf; C-Band Alliance Comments, 8-9 (Aug. 7, 2019), https://ecfsapi.fcc.gov/file/108071378423084/CBA%20%20Comments%20to%20Other%20Proposals%20PN.pdf; C-Band Alliance Ex Parte Letter, Attachment Transition Implementation Process, 6-7 (Apr. 9, 2019), https://ecfsapi.fcc.gov/file/10409183088602/CBA%20%20Ex%20Parte%20re%20CBA%20Implementation%20Process.pdf.

[40] Eutelsat's own Transition Plan provides a higher cost estimate for single-launch C-band satellite than the estimate provided in Intelsat's Transition Plan. *Compare* Eutelsat S.A. Transition Plan, 42 (June 19, 2020), https://ecfsapi.fcc.gov/file/106202910419088/Eutelsat%20Transition%20Plan%20(FINAL%202020-06-19).pdf, *with*, Intelsat C-Band Clearing Transition Plan, 15 (June 19, 2020). This is further evidence that Intelsat's estimated costs for its replacement satellites are reasonable and that Intelsat will not be unjustly enriched by any alleged "windfall."

[41] Eutelsat Petition, 12.

assigned to the Clearinghouse and add another layer of process that is likely to result in delay. As such, Eutelsat's requests should be denied.

D. Limitations on Future Satellite Functionality and Uses Are Beyond the Scope of This Proceeding and Should Be Rejected.

Eutelsat also suggests additional restrictions on the normal commercial flexibility satellite operators would otherwise enjoy by proposing a "claw-back requirement as a safeguard to discourage satellite operators that accept relocation payments to deploy new C-band satellite capacity to serve CONUS from relocating or redeploying that capacity elsewhere."[42] Eutelsat suggests that the FCC "clarify how it will treat new C-band satellite capacity serving CONUS initially, but which later (i.e., before its end-of-life) is relocated or otherwise provides service outside of CONUS."[43] Any argument that the FCC should use the C-band transition as a reason to dictate or restrict future satellite use once the transition is complete is entirely unwarranted because it strays far beyond any framework the FCC has used in other *Emerging Technologies* proceedings and requires the Commission – rather than the marketplace – to determine the use of orbital resources.[44]

The costs that are to be reimbursed to satellite operators for the transition are costs necessary to achieve the clearing of the C-band using the FCC's rule-based benchmarks. These payments are not meant to be regulatory proscriptions that restrict operators' post-transition operations – treating them in that way would stray far beyond their function and purpose. Satellite operators regularly redeploy their fleets in order to ensure more efficient operations or, in some cases, to meet sudden increased demand elsewhere in the world. For example, Intelsat has on more than one occasion moved a satellite to satisfy demand from the Department of Defense and that level of flexibility must be maintained once the transition is complete.

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[42] *Id.* at 9.
[43] *Id*. at 12.
[44] *See* 47 C.F.R. § 1.429(l)(5).

The Commission has a long-standing policy of giving satellite operators the flexibility to manage their fleets in an efficient manner. The FCC's and the Clearinghouse's purpose is not to overrule or limit satellite operators' business decisions for the next 10 years. In particular, the FCC's *Emerging Technologies* precedents find it significant that end users retain the same ability to access facilities and quality of service before and after a spectrum relocation.[45] Intelsat should therefore have the same ability to respond to customers' needs in a competitive marketplace after the transition as before the transition. For all these reasons, the FCC should reject Eutelsat's Petition for Reconsideration in its entirety.

II. THE COMMISSION SHOULD DISMISS ITSO'S REQUESTS FOR RELIEF.

ITSO's Petition also fails on both procedural and substantive grounds. Procedurally, ITSO reasserts arguments already considered and rejected by the Commission and fails to raise any new facts or identify any material error or omission in the Report and Order, making reconsideration inappropriate. Substantively, ITSO's demands reveal a complete lack of understanding about its non-existent role in the C-band transition, the policy and purpose of the Report and Order, Intelsat's Transition Plan, and the modern satellite communications market. ITSO's requests are unnecessary or inappropriate, and the FCC should dismiss them.

A. The Commission Should Reject ITSO's Request as Procedurally Defective.

ITSO's Petition is procedurally defective because ITSO fails to meet the procedural standard for clarification or reconsideration. Here, ITSO's Petition should be dismissed first because ITSO rehashes arguments that have already been considered and addressed by the Commission, and second because ITSO neither raises new facts nor identifies any error or omission in the Report and Order.

[45] *See, e.g.*, 47 C.F.R. § 90.699(d).

As an initial matter, the Commission has already considered—and rejected—ITSO's arguments. ITSO's primary argument is that the Report and Order "could adversely affect Intelsat's ability to utilize the ITSO Parties' 'Common Heritage,' in meeting its Public Service Obligations to which Intelsat committed as part of the privatization restructuring, as well as ITSO's discharge of its supervisory responsibilities over Intelsat to assure that those Public Service Obligations are being met."[46] But as ITSO candidly acknowledges, it already raised the ***exact same*** arguments before the FCC in this proceeding.[47] The agency explicitly considered and rejected these arguments, explaining that it had "***fully taken into account*** the possible effects on currently authorized operators and other users" and that the Report and Order adequately addressed the issues "of concern to [ITSO]."[48]

ITSO's subsidiary arguments fare no better. ITSO argues that the Commission should "clarify" that reimbursable "soft costs" associated with the transition include the "reasonable costs ITSO will incur in overseeing Intelsat during the transition."[49] The FCC has already considered and rejected ITSO's request for "appropriate compensation" for its "supervisory"

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[46] *See* ITSO Petition, 1-2.

[47] *Id.* at 5; *see also* ITSO *Ex Parte* Letter, 2, 4 (Feb. 26, 2020), https://ecfsapi.fcc.gov/file/10226053423023/02-26-2020-DG-11%20Letter%20to%20FCC%20Chairman.pdf ("[T]he Commission needs to consider the effect of its actions on any resulting reduction in the value of the ITSO Parties' Common Heritage. This includes providing for appropriate compensation in the form of financial remuneration, in order to safeguard ITSO's ability to continue supervising Intelsat's adherence to the Core Principles set forth in the ITSO Agreement."); ITSO Reply Comments, 2, 4 (July 18, 2019), https://ecfsapi.fcc.gov/file/107181825000551/ITSO%20Reply%20Comments%20%20Gen%20Docket%2018-122.pdf ("[A]ny reduction in the ability of satellites deployed at [the Common Heritage] orbital locations to utilize the full allocation of C-Band downlink frequencies would have a profound impact not only on current but also the future provision of regional and international public telecommunications services from those locations by Intelsat or by other entities that may in the future be authorized to utilize the ITSO Parties' Common Heritage. . . . [I]t will be incumbent on the FCC to ensure that any action taken is consistent with its international obligations under the ITSO Agreement.").

[48] *See* Report and Order, para. 32, n.104 (emphasis added).

[49] ITSO Petition, 15–16.

activities.[50] ITSO requests that the agency "affix the Common Heritage conditions" to any replacement satellites launched during the transition. [51] Again, the Commission already concluded that its "decisions do not affect in any way the Common Heritage ITU frequency assignments, which continue to be as valid as they were before this Commission Report and Order."[52] ITSO also asks the FCC to clarify that "customer grooming" cannot disadvantage Intelsat's Common Heritage customers. [53] Once again, the agency has addressed this issue and has "fully taken into account the possible effects [of its decision] on . . . users of the [C-band] services being provided" in its discussion on "satellite grooming."[54]

Moreover, ITSO does not even attempt to identify any material error or omission in the original order or put forth new facts that warrant reconsideration.[55] To the contrary, ITSO admits that it agrees "with the Commission's desired outcome" and seeks clarification only "so that common goals that ITSO and the Commission share can best be achieved."[56] This is a far cry from a petition highlighting specific "evidence in the record" "that warrant[s] consideration."[57] Indeed, ITSO does not point to a single new fact that merits clarification or reconsideration of the Report and Order. Instead, ITSO points to decisions and observations from decades past and to a parade of speculative hypotheticals.[58] The FCC's rules prohibit such

[50] ITSO *Ex Parte* Letter, 2 (Feb. 26, 2020) (arguing that the FCC should "provid[e] for appropriate compensation in the form of financial remuneration, in order to safeguard ITSO's ability to continue supervising Intelsat's adherence to the Core Principles set forth in the ITSO Agreement").
[51] ITSO Petition, 16–17.
[52] Report and Order, para. 32, n.104.
[53] ITSO Petition, 17.
[54] *See* Report and Order, para. 32, n.104.
[55] *See generally* ITSO Petition.
[56] *See id.* at 4.
[57] *See, e.g.*, Intelsat Petition for Reconsideration, 4 (May 26, 2020), https://ecfsapi.fcc.gov/file/10526884925025/Petition%20for%20Reconsideration%20-%20Intelsat%2026%20May%202020.pdf.
[58] *See, e.g.*, ITSO Petition, 3 (discussing the Commission's observations regarding INTELSAT privatization in 2000), 4 (quoting a 12-year old Commission decision), at 8 (describing "potential

procedurally defective attempts at reconsideration. Accordingly, the FCC should dismiss or deny ITSO's request pursuant to Section 1.429 of its rules.

B. ITSO Is Obsolete, Will Play No Role in the C-Band Transition, and Has No Basis for the Relief It Seeks.

The ITSO Petition also warrants dismissal on substantive grounds. Far from "continu[ing] to remain critical today,"[59] market forces, technological innovations, and the passage of time have rendered ITSO obsolete. Consequently, as discussed below, each of ITSO's six requests for relief fails. Specifically, the Commission need not reaffirm commitment to the Core Principles or ITSO's purported mission. ITSO has no role to play in "overseeing" the C-band transition and, thus, has no right to or need for costs associated with supervisory activities. The ITSO parties are not entitled to any compensation for the transition. There is no need to affix Common Heritage conditions to any new satellites. Clarification regarding the impact of "customer grooming" on Intelsat's customers is likewise unnecessary. Finally, Intelsat can ensure global connectivity and coverage despite the C-band transition—and without any interference from ITSO. For these reasons, the FCC should dismiss ITSO's Petition.

1. ITSO's Supervision of Intelsat's Adherence to the Core Principles Is Superfluous.

ITSO's primary request is that the Commission "re-affirm its support for ITSO's supervision of Intelsat's adherence to the Core Principles," ostensibly because ITSO believes it retains a "critical" role "in the oversight of Intelsat's implementation of the transition."[60] The agency should reject this request. First, ITSO's role vis-à-vis Intelsat is set out in, and limited by, the Public Service Agreement ("PSA").[61] Pursuant to the PSA, ITSO is "entitled," but not

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indirect" risks and "potential[]" adverse effects of Report and Order), 12 (referencing principles adopted in 1971).

[59] *Id*. at 13.

[60] *Id.* at 13, 15.

[61] Public Service Agreement between The International Telecommunications Satellite Organization ("ITSO") and Intelsat, July 18, 2001 ["PSA"].

required, "to review and assess" Intelsat's performance of its Public Service Obligations.[62] ITSO's role is modest in scope and ministerial in function, largely limited to reviewing publicly available information to confirm Intelsat's compliance with these obligations.[63] ITSO thus has no part to play in overseeing Intelsat's implementation of the C-band transition. The Commission should reject ITSO's attempt to use the transition as an opportunity to expand its functions beyond those authorized by the PSA.

Second, as a brief overview of the history of Intelsat and ITSO reveals, ITSO's role under the PSA has become outdated. Customers no longer depend solely on Intelsat's satellite operations for global connectivity, and technological and market changes have rendered even ITSO's remaining function superfluous.

Intelsat has its origins in INTELSAT, an intergovernmental consortium formed by twenty-three member countries (grown to 149 over time) (the "Member States") in 1964 to own and operate a global satellite system and provide global connectivity and coverage on a non-discriminatory basis.[64] Over time, as the U.S. acknowledged, "extraordinary technological and market changes . . . reshaped the global satellite communications marketplace."[65] By 1999, "competition in the area of satellite communications [had] increased, and it became apparent that for INTELSAT to survive in the global market, it would need to operate with much greater flexibility than was possible for an international organization."[66]

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[62] PSA, art. 3.01.
[63] *See* PSA, art. 3 (describing ITSO's role as reviewing reports, making recommendations, and assisting LCO customers with disputes on the basis of information provided by Intelsat).
[64] Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), with Annexes, *opened for signature* Aug. 20, 1971, 23 UST 3813, 1220 UNTS 21.
[65] S. REP. NO. 106-100, at 1 (1999).
[66] *Privatization of INTELSAT*, 95 AM. J. INT'L L. 893, 894 (2001).

In 2001, to address these changing market conditions, the Member States transferred INTELSAT's assets to a private company, Intelsat.[67] To acknowledge concerns raised by a minority of states that a private company might retreat from the principles of global connectivity, global coverage, and non-discriminatory access, the Member States also amended the INTELSAT Treaty to leave behind a residual organization called "ITSO."[68] The sole duties of ITSO were to ensure a successful transition of the Common Heritage filings to the notifying administrations (the United States and the United Kingdom.) and to oversee Intelsat's compliance with the Core Principles. ITSO is not now (and never has been) a regulator and has no authority to direct Intelsat's activities.

At privatization, Intelsat undertook to "provide telecommunications services on a commercial basis," consistent with the Core Principles. Intelsat agreed in the PSA to (1) maintain global connectivity and coverage and serve its lifeline connectivity customers; (2) honor favorable contracts with those lifeline customers (the "LCO contracts"); and (3) provide non-discriminatory access to the Intelsat satellite system.[69]

Member States believed that even this modest role would be confined to an initial 12-year transitional period. Consequently, they gave ITSO 12 years of guaranteed operation, subject to termination thereafter, and they secured ITSO funding for this 12-year term by carving out a

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[67] *Id.* at 894-95.

[68] *See e.g. Multilateral Negotiations on Space Issues*, FRANCE DIPLOMACY, diplomatie.gouv.fr/en (last visited June 3, 2020) (noting France's role in establishing ITSO to ensure compliance with core principles); *see also* Thomas L. McPhail, GLOBAL COMMUNICATION: THEORIES, STAKEHOLDERS, AND TRENDS 280 (2d ed. 2009) (noting "peripheral nations'" fear of losing connectivity "in a privatized environment in which the sheer weight of economics and profitability will dominate future decision-making"). ITSO was created as a narrowly-purposed "supervisory organization" with a limited mandate to "ensure that [Intelsat] fulfills the Core Principles." Agreement Relating to the International Telecommunications Satellite Organization ITSO (formerly INTELSAT), Pmbl & art. 3(b), *amendment opened for signature* Nov. 17, 2000, 23 UST 3813, 1220 UNTS 21 ["ITSO Agreement"].

[69] PSA, art. 2.01.

lump sum from the assets transferred from INTELSAT to Intelsat at privatization.[70] In the event ITSO continues beyond 12 years, the PSA provides that Intelsat will fund ITSO annually "in an amount to be negotiated, in good faith," by ITSO's Director General and Intelsat's Chief Executive Officer.[71] And the LCO contracts with lifeline connectivity customers ran for 12 years, reinforcing that most Member States expected Intelsat to eventually operate without supervision as the satellite environment became globally competitive.[72]

The last of these LCO contracts expired in 2019 and, with it, the majority of ITSO's supervisory tasks.[73] As such, ITSO's sole remaining function under the PSA is to monitor Intelsat's adherence to the Core Principles by "receiv[ing] reports, and if necessary, mak[ing] recommendations or . . . other appropriate action" if Intelsat does not adhere.[74] ITSO has not once had to make such a recommendation, because Intelsat is (and has always been) dedicated to the Core Principles.

The success of U.S. efforts to honor the Core Principles at Intelsat's privatization, coupled with changes in the technological landscape, have rendered this remaining role obsolete. As to the former, the Commission noted in its final ORBIT Act report to Congress that Intelsat had made "capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years."[75] The Commission accordingly recognized that the ORBIT Act report "is no longer necessary in light of the successful privatization of INTELSAT . . . many years ago."[76]

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[70] ITSO Agreement, arts. 7, 21.
[71] PSA, art. 14.01; *see also* ITSO Agreement art. 7.
[72] ITSO Assembly of Parties, *Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E, Attach. 4 at art. 4.1 (13-17 Nov. 2000).
[73] *See id.*, para. 8(e) (13-17 Nov. 2000) (explaining that four of ITSO's six supervisory tasks involve monitoring LCO contracts and customers).
[74] PSA, art. 3.01.
[75] FCC Report to Congress as Required by the ORBIT Act Eighteenth Report, *18th Report*, 32 FCC Rcd. 5161, para. 5, n.12 (2017) ["*18th FCC ORBIT Act Report*"].
[76] *Id.* para. 18, n.31. Congress agreed and repealed the reporting requirement in 2018. *See* ORBIT Act, Pub. L. 109–34, §4, July 12, 2005, 119 Stat. 377 (repealed 2018).

As to the latter, the global telecommunications market has significantly evolved since Intelsat's 2001 privatization. Then, telecommunications infrastructure was in its infancy. Nearly 92 percent of the world lacked Internet access.[77] Now, however, there are more people *with* Internet access than without.[78] The most dramatic gains have come from developing countries—the very nations that previously depended on satellites.[79] Likewise, the satellite industry has transformed into a burgeoning competitive marketplace. Investors have poured billions of dollars into hundreds of satellite companies.[80] Given the concurrent increase in global connectivity and competition in the market for satellite services, ITSO's mandate to oversee the provision of "global connectivity and global coverage" represents a relic of a bygone era. Accordingly, ITSO's request that the FCC re-affirm its commitment to ITSO's supervision of Intelsat should be rejected.

2. ITSO's Request for Funding Is Inappropriate and Unnecessary.

ITSO will not incur costs as part of the C-band transition and thus has no basis for reimbursement.[81] Specifically, ITSO has no role to play in overseeing the C-band transition, as the Commission has already determined that the transition will not impede Intelsat's ability to

[77] *See Individuals using the Internet (% of population)*, THE WORLD BANK, https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2018&start=2001 (last visited June 3, 2020).
[78] CISCO Annual Internet Report (2018–2023) White Paper, at 5 (Mar. 9, 2020), https://www.cisco.com/c/en/us/solutions/collateral/executive-perspectives/annual-internet-report/white-paper-c11-741490.html (finding 3.9 billion people—51% of the global population—had Internet access in 2018).
[79] *See Individuals using the Internet (% of population) - Low income*, THE WORLD BANK, https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2018&locations=XM&start=2001 (last visited June 3, 2020) (showing that the percent of the population using the Internet grow from roughly one tenth of 1% in 2001 to more than 16% in 2018 in countries classified by the World Bank as "low income").
[80] Kyra Durko, *The New Space Race: Today's Space Tech Landscape (or Spacescape)*, TWO SIGMA VENTURES (May 21, 2019), https://twosigmaventures.com/blog/article/the-new-space-race-todays-space-tech-landscape-or-spacescape/.
[81] Intelsat Petition for Reconsideration, 15–16.

provide global connectivity and coverage. Moreover, ITSO's funding is determined by the PSA. For these reasons, the FCC should reject ITSO's request for C-band-related funding.

As set out above, ITSO's role in supervising Intelsat is limited by the PSA and largely involves pro forma review of publicly available information that can be conducted at minimal cost. "Overseeing" Intelsat during the transition is thus beyond ITSO's mandate and, in any event, outside the scope of ITSO's expertise, as demonstrated by ITSO's limited knowledge of Intelsat's U.S. C-band operations. Intelsat's C-band Transition Plan is the result of years of work—by Intelsat, not ITSO—based on proprietary information Intelsat has about its satellite network and customer relationships.[82] ITSO's meddling in the process would add no value to the transition and could result in delay—thus impeding the FCC's clear goal of speed.[83]

Additionally, ITSO's funding is beyond the scope of this proceeding. As noted, ITSO's funding is determined according to the PSA, which requires ITSO's director general and Intelsat's CEO to negotiate ITSO's budget annually.[84] Funding disputes must be resolved by binding arbitration conducted under the Rules of the International Chamber of Commerce ("ICC").[85] On November 18, 2019, ITSO commenced an arbitration against Intelsat under the ICC Rules to resolve a dispute related to the appropriate funding amount for ITSO's FY 2020 and 2021 activities. ITSO now seeks to circumvent this process and the funding provisions of the PSA by requesting the FCC to issue a funding order in ITSO's favor. This request is

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[82] *See* Intelsat License LLC C-Band Clearing Transition Plan, 4 (June 19, 2020).
[83] *See* Report and Order, para. 22 ("We adopt this approach because it will ***rapidly and effectively*** repurpose this band for new wireless terrestrial uses[.]") (emphasis added), para. 185 ("[S]tudies underscore the importance of incentivizing incumbents to clear the band for 5G use ***as quickly as possible.***") (emphasis added); Expanding Flexible Use in the 3.7-4.2 GHz Band, *Statement of Chairman Ajit Pai*, 1, https://docs.fcc.gov/public/attachments/FCC-20-22A2.pdf ("***[V]irtually everyone agrees that we need to act expeditiously*** to make a large amount of C-band spectrum available for 5G.") (emphasis added).
[84] PSA, art. 14.01; *see also* ITSO Agreement art. 7.
[85] PSA, art. 6.03-6.05.

inappropriate and constitutes an impermissible end-run around the pending arbitration.[86] The Commission need not—and should not—usurp the ICC Tribunal's authority to determine ITSO's funding level. Accordingly, ITSO's request for reimbursement of costs associated with completely unnecessary work should be rejected.[87]

3. ITSO Parties Are in No Way Entitled to Any Portion of Intelsat's Acceleration Compensation

ITSO "submit[s] that some portion of [Intelsat's acceleration payment] should be made available for the benefit of the ITSO Parties."[88] ITSO's argument is based on the faulty premise that acceleration payments are "compensation provided to Intelsat for relinquishment of C-band capacity."[89] This characterization is incorrect. The Report and Order makes clear that "[i]ncumbent space station operators are not 'selling' their spectrum usage rights" and that instead, acceleration payments "incentivize[] incumbent space station operators to expedite the transition while increasing the value of the entire transition effort for the American public."[90] Neither ITSO nor any of its constituent parties play a role in relocating C-band services, let alone being entitled to acceleration payments. Indeed, diverting Intelsat's acceleration payment to a third party would be blatantly unfair to the accelerated relocation commitment that Intelsat has

[86] *Cf.* Antilles Wireless, L.L.C. d/b/a Usa Digital, *Order on Reconsideration*, 24 FCC Rcd. 4696, para. 8 (2009) (finding arguments about a "lease agreement between" private parties did not "present a basis for reconsidering [Wireless Telecommunications Bureau's] prior action" because "[t]he Commission generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law.").
[87] 47 C.F.R. § 1.429(l)(5); *see also NTCH, Inc. v. FCC*, 950 F.3d 871, 880–81 (D.C. Cir. 2020) (upholding Commission decision to deny petition raising argument "beyond the scope of the Commission's rulemaking.").
[88] ITSO Petition, 18.
[89] *Id.* at 17.
[90] Report and Order, para. 214.

made without increasing the value of the transition effort for the American public.[91] Accordingly, ITSO's request should be rejected.

4. ITSO's Remaining Requests Reflect a Fundamental Ignorance of the Transition and Intelsat's Operations.

ITSO's remaining requests reveal its utter lack of knowledge about the transition, Intelsat's operations, and the satellite ecosystem writ large. ITSO's ignorance of these matters further demonstrates that its supervision is unnecessary and counterproductive.

First, ITSO requests that the Commission clarify that any new satellites acquired by Intelsat during the transition be "designed and located" to "fully support satellite services . . . consistent with the Core Principles and . . . affix the Common Heritage conditions to any of the orbital locations to which replacement satellites are to be launched."[92]

The Common Heritage is a defined term that refers to orbital locations and frequency assignments made on INTELSAT's behalf by groups of its Member States in the pre-privatization period.[93] The Common Heritage slots were transferred to the U.S. and the U.K. as Notifying Administrations at Intelsat's privatization.[94] None of the Common Heritage slots, however, are in the U.S. North American arc and, thus, none are impacted by Intelsat's Transition Plan.[95] Accordingly, there is no need to affix Common Heritage conditions to any satellites launched as part of the transition. As the FCC already has explained, the Common

[91] Moreover, this policy would raise difficult questions about whether the FCC should directly subsidize foreign states, *i.e.*, the ITSO Parties.
[92] ITSO Petition, 16-17.
[93] ITSO Agreement, art. 1.
[94] *Id.*, art. 12.
[95] *See* Intelsat C-Band Clearing Transition Plan, 5, n.3 (June 19, 2020) (explaining that the U.S. North American arc "is the portion of the geostationary arc that is used primarily for the distribution of television and radio programming to all 50 U.S. states. It consists of those orbital locations from 87˚ W.L. through 139˚ W.L.").

Heritage slots are not affected by the transition,[96] and there is thus nothing for ITSO to supervise. Moreover, Intelsat fulfills its Core Principle obligation by operating a satellite system that provides global connectivity and coverage on a non-discriminatory basis. There is no requirement that Intelsat use specific Common Heritage satellites within that system to meet this obligation. ITSO's Petition demonstrates its unfamiliarity with the C-band transition, Intelsat's operations, and the impact of the Report and Order.[97]

Second, ITSO's requested clarification that any "customer grooming" cannot disadvantage Intelsat's customers by involuntarily shifting them to non-Common Heritage satellites is also unwarranted. The satellites being groomed do not have Common Heritage frequencies. As such, customers currently operating on Common Heritage frequencies are not impacted by the grooming. ITSO's request for clarification on the impact of customer grooming on Common Heritage customers is thus moot, as the FCC already has acknowledged.[98]

Finally, ITSO requests reconsideration of the determination to only permit international gateway services at the four to-be-designated Telemetry Tracking & Control ("TT&C") sites on a secondary basis, suggesting that four sites are not sufficient.[99] ITSO's concern about international gateway services downlinking in CONUS is valid, but its request otherwise betrays ITSO's lack of understanding about the transition and reinforces that ITSO's so-called "supervision" is not required. As an initial matter, Intelsat does not need four gateway sites.

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[96] Report and Order, para. 32, n.104 (explaining that "decisions do not affect in any way the Common Heritage ITU frequency assignments, which continue to be as valid as they were before this Commission *Report and Order*.").

[97] ITSO's request is also a further demonstration of the organization's failure to appreciate its own role. Under the ITSO Agreement, the U.S. and U.K., as Notifying Administrations, safeguard and manage the Common Heritage Slots. ITSO Agreement, art. 12(c). ITSO has no right, title, or interest to them, and ITSO's supervision of the Common Heritage is not required in the C-Band transition.

[98] *See* Report and Order, para. 32, n.104 (noting the Commission has "fully taken into account the possible effects [of its decision] on . . . users of the [C-band] services being provided" in its discussion on "satellite grooming").

[99] ITSO Petition, 15.

Intelsat is consolidating its CONUS TT&C/Gateways to two sites, one on each coast.[100] These sites will suffice to downlink international services in CONUS.[101]

Nevertheless, Intelsat does require protection of the full 500 MHz at these two consolidated sites to ensure continuity for existing international services downlinking in CONUS. For this reason, Intelsat has already petitioned the FCC for protection for the full 500 MHz at both sites.[102] Intelsat is thus already taking the necessary steps to protect international service continuity. Although FCC action is needed to ensure this continuity, ITSO's supervision is not.

III. CONCLUSION

For the reasons set forth above, neither Petition raises issues that merit reconsideration. As a result, the Petitions should be denied.

Respectfully submitted,

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[100] *See* Intelsat C-Band Clearing Transition Plan, 4, 18-22 (June 19, 2020) (explaining how Intelsat will operate the two gateway sites to provide service continuity to customers on international satellites that downlink in CONUS).
[101] *See id.*
[102] Intelsat Petition for Reconsideration, 2-7.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2020, a true copy of the foregoing Intelsat License LLC's Opposition to Petitions for Reconsideration was served via electronic mail upon:

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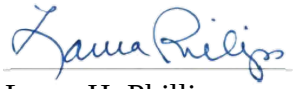

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